IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2584 OF 2004

Abdul Sattar Haji Usman & Ors. ...Petitioners.

Versus

Additional Collector (ENC) & Ors. ...Respondents.

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Mr. A.Y. Sakhare, Senior Advocate with Mr.D. R.Shah for the Petitioners.
Mr. Pradeep Jadhav, AGP for for Respondent Nos.1 and 2.
Mr. Ashish K.Patil for Respondent No.3.
Mr. V. M.Vaghela for Respondent No.4.
Mr.G. D. Uttangale for Respondent No.5.

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CORAM : DR. D.Y. CHANDRACHUD, J.

March 7, 2005.

P.C.:

On 31st August 1997, land comprised in several survey numbers in Koldongri at Vile-Parle, was declared as a slum.

Thereafter, on 26th July 2002, there was another declaration of a slum area. The land has been notified for acquisition on 23rd July 2004 and has been acquired. A Slum Rehabilitation Scheme has been sanctioned for rehabilitating over 300 slum dwellers. The declaration of a slum in 2002, the acquisition of the land and the Slum Rehabilitation Scheme are challenged in these proceedings under Article 226 of the Constitution.

The Petitioners claim title to certain immovable properties under a Deed of Conveyance of 23rd December 1974 that was executed between their predecessor, Hajarabai and the Roman Catholic Archbishop of Bombay. Under the Deed of Conveyance, the lands described in the Fifth Schedule thereto were conveyed and, in so far as the present proceedings are concerned, CTS No.40 (part) is among the lands forming the subject matter of conveyance.. This assumes some significance in considering the challenge in these proceedings. According to the Petitioners the land that was conveyed by the original Deed of Conveyance, was rectified by a

Deed of Rectification dated 7th June 2004. The alleged Deed of Rectification is thus on its face, 30 years after the original Deed of Conveyance. But, what is of greater significance in so far as the question of title is concerned, is that the Deed of Rectification is signed only by the Petitioners. Though it purports to be a Deed between the Archbishop and the Petitioners, it has not been executed by any one on behalf of the vendor. Ex-facie therefore, there is merit in the serious objection which the AGP has placed before the Court in regard to the foundation of the alleged tittle of the Petitioners. Faced with this insuperable difficulty, Counsel appearing on behalf of the Petitioners concedes that in so far as the lands which the Petitioners claimed to have acquired under the alleged Deed of Rectification of 7th June 2004 are concerned, the Petitioners would first have to establish their title in an independent proceeding without which a claim of title cannot be sustained. The concession of Learned Counsel, however, does not conclude this aspect of the matter. The Petitioners have sought to rely upon the alleged Deed of Rectification dated 7th June 2004 in paragraph 2 of the Petition and it is on that

foundation that they claim to be the owners of several properties including those which form the subject matter of the declaration of the slum and the acquisition under the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971 ("the Act"). The reason for the alleged Deed of Rectification which the Petitioners unilaterally executed nearly 30 years after the original Deed of Conveyance, is not far to seek. Some of the relevant facts would make the reason abundantly clear.

Originally, on 31st August 1977, a notification declaring certain lands as a slum area under Section 4(1) of the Act was issued. The declaration covered 39,129.1 sq.mtrs. including lands comprised in CTS No.40, 40/1 to 129 admeasuring 3695.6 sq.mtrs. On 26th July 2002 a further notification was issued under 4(1) covering lands comprised in CTS No.38, 38/1 to 3, 40, 40/1 to 74 and 73 to 128 totally admeasuring 4753.03 sq.mtrs. Now the original Deed of Conveyance that was entered into between the Petitioners' predecessor and the Arch Bishop has absolutely no reference to CTS

38. A preliminary notification of 10th June 2004, was issued for acquisition. Thereafter, under Section 14(1) a final notification was issued on 23rd July 2004 in respect of CTS Nos.38, 38/1 to 3, 40, 40/1 to 64, 40/73 to 129 and 45 (part). The alleged Deed of Rectification which the Petitioners purport to have executed is dated 7th June 2004. The photo copy which is placed on the record contains an obvious obliteration of the date of the execution of the document which is obvious even upon a bare perusal. How a Deed of Rectification could have been entered into nearly 30 years after the execution of the original document, for the purpose of an alleged correction of the schedule containing the property that was conveyed without the vendor being a party to the document defies rational explanation. The obvious attempt of the Petitioners was to bring in additional CTS numbers by executing a Deed of Rectification. The effort of the Petitioners was to create a document to bolster a challenge to the declaration of a slum, the acquisition proceedings which were in any event imminent and the slum rehabilitation scheme which was proposed by the slum dwellers residing on the plot of land.

The jurisdiction under Article 226 is a jurisdiction in aid of justice. The Court is not bound to exercise its jurisdiction and in fact, would be justified in declining equitable relief to a party which sets up an obviously bogus case of title to substantiate a challenge to an acquisition of land for a public purpose for the rehabilitation of slum dwellers. This is clearly a case where the Petitioners by their conduct are disentitled to the grant of equitable relief. The Notification dated 23rd July 2004, has been published in the Official Gazette. Section 14 (1A) provides that the acquisition of land for any purpose mentioned in sub-section (1) shall be deemed to be a public purpose. Under sub-section (2) of Section 14 where a notice is published in the official gazette under Section 14(1), the land shall on and from the date on which the notice was published vest absolutely in the State Government free from all encumbrances. Vesting is, therefore, complete. The Petitioners have a right to apply for payment of compensation under Section 16. Sections 18, 19, 20 and 21 make elaborate provisions for the determination of compensation and

provide a remedy against the amount of compensation as determined by the competent authority, to the Tribunal. The Petitioners must, in my view, be relegated to this remedy which it is open to them to pursue.

The State, in its affidavit, has averred that the landlord had not made any effort to improve the living conditions of hutment dwellers for 25 to 30 years and it had become necessary to acquire the land to rehabilitate the hutment dwellers. Consequently, the land came to be acquired on 23rd July 2004. The Third Respondent who is the Secretary of a proposed Co-operative Housing Society of Slum Dwellers has stated in his affidavit that in 2001, the slum dwellers came together with a proposed Co-operative Housing Society and approached the Fourth Respondent Developer with consents of over 80% of the slum dwellers. There were 411 slum dwellers. On 9th April 2003, Annexure II came to be certified in which 308 slum dwellers were declared as being eligible to participate in the Slum Rehabilitation Scheme. The Fourth Respondent has filed an affidavit

recording that a Letter of Intent has been issued by the Slum Rehabilitation Authority on 22nd September 2004. On 27th October 2004, an amount of Rs. 24.92 lakhs has been deposited on account of the cost of acquisition. A further amount of Rs. 48.92 lakhs is stated to have been expended by entering into agreements for possession. An amount of Rs. 6 lakhs is stated have expended towards transit accommodation rent for 20 tenements of which six have already shifted to transit accommodation. Having regard to these facts as well, it would manifestly not to be in the interests of justice to exercise the jurisdiction under Article 226.

In so far as the slum declaration is concerned, the notification dated 26th July 2002 was sought to be questioned on the ground that the Government had issued a direction, for the declaration of the land as a slum area. Hence, it was urged that the direction of the Government to acquire the land would vitiate the notification since the declaration is subject to an appeal under Section 35. There is no merit in this submission for more than one reason.

Firstly, apart from the notification dated 26th July 2002, there was, as already noted, an earlier notification dated 31st August 1977 by which part of the land was declared as a slum area. Secondly, the affidavit of the Resident Deputy Collector (Western Suburbs) clarifies that a detailed report dated 24th October 2001 had been prepared setting out the inadequate basic amenities that have been made available to the hutment dwellers. The report was prepared after a site inspection and the lack of hygienic conditions was reported to the Housing and Special Assistance Department. There has, therefore, been a due application of mind to all the statutory requirements. The Tribunal has dealt with the challenge to the declaration of slum. In para 16 of its order, the Tribunal has noted the existing amenities and the Tribunal concluded that there was an "acute and severe lack" of basic amenities. The Tribunal held that the CTS numbers under which the Petitioners herein claim, are a small part of a vast slum area and to delete a small portion therefrom would obstruct the redevelopment of the area and the rehabilitation of the slum dwellers. The findings of the Tribunal of the absence of basic amenities and of the existence of

the conditions required under Section 4(1) for the declaration of a slum are essentially findings of fact by an expert body which do not warrant interference under Article 226. The findings are not shown to be perverse or arbitrary.

In so far as the acquisition is concerned, Counsel appearing on behalf of the Petitioners urges on the basis of a judgment of RMS Khandeparkar, J. in **Smt.Ramkali vs. Deputy Collector,** 2004 (2) All M.R. 320 that a decision of the Competent Authority regarding need for improvement has to precede action by the State Government to acquire the land under Section 14. The decision of the Learned Single Judge is distinguishable for the simple reason that in that case, there was an absence of a representation by the Competent Authority to the State Government. In the present case, this is not the position. That apart, the Deed of Rectification on which the Petitioners place reliance in support of their title is evidently a dubious document. Even assuming, as the Petitioners contend, that some parts of the land covered in CTS 40 have been conveyed to the Petitioners under the

original Indenture of Conveyance of 1974, this is a fit and proper case where the Petitioners must be relegated to their remedy of receiving compensation under the provisions of the Act. Once vesting has taken place under the law providing for acquisition of land for public purposes, Courts are and must be careful in interfering in matters of acquisition. The lands of the Petitioners, as the Tribunal noted, are a small part of a vast area and any interference by the Court will only operate to obstruct the redevelopment of the land and the rehabilitation of the slum dwellers. Above all, the Petitioners have disentitled themselves to the grant of any relief under Article 226 by setting up what on its face is a sham Deed of Rectification. There is no merit in the petition which is accordingly rejected.

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